

# Supreme Court of the United States

OCTOBER TERM, 1969

No. 84

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UNITED STATES OF AMERICA,

*Appellant,*

—v.—

MILTON C. JORN,

*Appellee.*

---

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR  
THE DISTRICT OF UTAH, CENTRAL DIVISION

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IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF UTAH, CENTRAL DIVISION

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CR-9-68

UNITED STATES OF AMERICA, PLAINTIFF

*vs.*

MILTON C. JORN, DEFENDANT

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INFORMATION

Violation 26 U.S.C. § 7206 (2). WILLFULLY AIDING AND  
ASSISTING IN THE PREPARATION & PRESENTATION OF  
FALSE & FRAUDULENT INCOME TAX RETURNS.

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The United States Attorney charges:

COUNT ONE

That on or about the 31st day of January, 1963, in the Central Division, District of Utah, Milton C. Jorn, a resident of Davis County, Utah, hereinafter called the defendant, did wilfully and knowingly aid and assist in, and counsel, procure and advise the preparation and presentation to the District Director of Internal Revenue for the Internal Revenue District of Utah, at Salt Lake City, Utah, of an income tax return of Carl and Geneva Boulden for the calendar year 1962, which was false and fraudulent as to material matters in that it set forth that the said taxpayers were entitled under the provisions of the Internal Revenue laws to claim deductions of,

\$ 30.00	for contributions to polio, heart, cancer, scouts, all others,
90.00	for union dues,
57.50	for uniforms and tools,
30.00	for ½ telephone, and
447.90	for medical, drugs & hospital expenses,

whereas, the defendant then and there well knew that these claimed deductions were excessive and overstated and that said taxpayers were entitled to claim as deductions for said calendar year not in excess of,

\$ 5.00	for contributions to polio, heart, cancer, scouts, all others,
75.00	for union dues,

and that taxpayers were not entitled to claim as deductions any amounts for uniforms and tools, telephone, and medical, drugs and hospital expenses, in violation of Section 7206 (2), Internal Revenue Code; and 26 U.S.C. § 7206 (2).

## COUNT TWO

That on or about the 30th day of January, 1964, in the Central Division, District of Utah, Milton C. Jorn, a resident of Davis County, Utah, hereinafter called the defendant, did wilfully and knowingly aid and assist in, and counsel, procure and advise the preparation and presentation to the District Director of Internal Revenue for the Internal Revenue District of Utah, at Salt Lake City, Utah, of an income tax of C. J. and Geneva Boulden for the calendar year 1963, which was false and fraudulent as to material matters in that it set forth that the said taxpayers were entitled under the provisions of the Internal Revenue laws to claim deductions of,

\$ 20.00	for all other contributions,
44.50	for real estate taxes,
90.00	for union dues,
62.00	for uniforms and tools,
30.00	for 1/2 telephone,

whereas, the defendant then and there well knew that these claimed deductions were excessive and overstated and that said taxpayers were entitled to claim as deductions for said calendar year not in excess of,

\$ 75.00	for union dues,
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and that taxpayers were not entitled to claim as deductions any amounts for other contributions, real estate

taxes, uniforms and tools, and  $\frac{1}{2}$  telephone, in violation of Section 7206 (2), Internal Revenue Code; and 26 U.S.C. § 7206 (2).

### COUNT THREE

That on or about the 30th day of January, 1965, in the Central Division, District of Utah, Milton C. Jorn, a resident of Davis County, Utah, hereinafter called the defendant, did wilfully and knowingly aid and assist in, and counsel, procure and advise the preparation and presentation to the District Director of Internal Revenue for the Internal Revenue District of Utah, at Salt Lake City, Utah, of an income tax return of C. J. and Geneva Boulden for the calendar year 1964, which was false and fraudulent as to material matters in that it represented that the said taxpayers were entitled under the provisions of the Internal Revenue laws to claim deductions of,

\$ 25.00	for dentists,
20.00	for all other contributions,
195.00	for interest expense to Sugarhouse Finance,
180.00	for Interstate C.U. interest expense,
155.20	for real estate taxes,
90.00	for union dues,
130.00	for uniforms (coveralls),
45.00	for tools,
40.00	for $\frac{1}{2}$ telephone,

whereas, the defendant then and there well knew that these claimed deductions were excessive and overstated and that said taxpayers were entitled to claim as deductions for said calendar year not in excess of,

\$ 2.00	for all other contributions,
160.00	for interest expense to Sugarhouse Finance,
117.00	for Interstate C.U. interest expense,
50.00	for real estate taxes,
78.00	for union dues,

and that taxpayers were not entitled to claim as deductions any amounts for dentists, uniforms (coveralls), tools, and  $\frac{1}{2}$  telephone, in violation of Section 7206 (2), Internal Revenue Code; and 26 U.S.C. § 7206 (2).

## COUNT FOUR

That on or about the 27th day of January, 1963, in the Central Division, District of Utah, Milton C. Jorn, a resident of Davis County, Utah, hereinafter called the defendant, did wilfully and knowingly aid and assist in, and counsel, procure and advise the preparation and presentation to the District Director of Internal Revenue for the Internal Revenue District of Utah, at Salt Lake City, Utah, of an income tax return of Grant L. and Vera Nielson for the calendar year 1962, which was false and fraudulent as to material matters in that it represented that the said taxpayers were entitled under the provisions of the Internal Revenue laws to claim deductions of,

\$ 40.13	for medicine and drugs,
156.00	for H & A insurance,
70.00	for uniforms and safety shoes,
25.00	for Ass. membership,

whereas, the defendant then and there well knew that these claimed deductions were excessive and overstated and that said taxpayers were entitled to claim as deductions for said calendar year not in excess of,

\$125.00	for H & A insurance,
15.00	for uniforms and safety shoes,

and that taxpayers were not entitled to claim as deductions any amounts for medicine and drugs, and Ass. membership, in violation of Section 7206 (2), Internal Revenue Code; and 26 U.S.C. § 7206 (2).

## COUNT FIVE

That on or about the 25th day of January, 1964, in the Central Division, District of Utah, Milton C. Jorn, a resident of Davis County, Utah, hereinafter called the defendant, did wilfully and knowingly aid and assist in, and counsel, procure and advise the preparation and presentation to the District Director of Internal Revenue for the Internal Revenue District of Utah, at Salt Lake City, Utah, of an income tax return of Grant L. and Vera Nielson for the calendar year 1963, which was false

and fraudulent as to material matters in that it represented that the said taxpayers were entitled under the provisions of the Internal Revenue laws to claim deductions of

\$ 37.50	for real estate taxes,
46.50	for medicine and drugs,
156.00	for H & A insurance
70.00	for uniforms and safety equipment,
100.00	for special ed.,

whereas, the defendant then and there well knew that these claimed deductions were excessive and overstated and that taxpayers were not entitled to claim as deductions any amounts for real estate taxes, medicine and drugs, H & A insurance, uniforms and safety equipment, and special ed., in violation of Section 7206 (2), Internal Revenue Code; and 26 U.S.C. § 7206 (2).

#### COUNT SIX

That on or about the 12th day of February, 1963, in the Central Division, District of Utah, Milton C. Jorn, a resident of Davis County, Utah, hereinafter called the defendant, did wilfully and knowingly aid and assist in, and counsel, procure and advise the preparation and presentation to the District Director of Internal Revenue for the Internal Revenue District of Utah, at Salt Lake City, Utah, of an income tax return of Lisle and Cora Price for the calendar year 1962, which was false and fraudulent as to material matters in that it represented that the said taxpayers were entitled under the provisions of the Internal Revenue laws to claim deductions of,

\$207.00	for church donations,
35.00	for all other contributions,
156.00	for union dues,
50.00	for uniforms and safety equip.,

whereas, the defendant then and there well knew that these claimed deductions were excessive and overstated and that said taxpayers were entitled to claim as deductions for said calendar year not in excess of,

\$ 27.00	for church donations,
36.00	for union dues,

and that taxpayers were not entitled to claim as deductions any amounts for all other contributions, and uniforms and safety equip., in violation of Section 7206 (2), Internal Revenue Code; and 26 U.S.C. § 7206 (2).

### COUNT SEVEN

That on or about the 16th day of February, 1964, in the Central Division, District of Utah, Milton C. Jorn, a resident of Davis County, Utah, hereinafter called the defendant, did wilfully and knowingly aid and assist in, and counsel, procure and advise the preparation and presentation to the District Director of Internal Revenue for the Internal Revenue District of Utah, at Salt Lake City, Utah, of an income tax return of Lisle and Cora Price for the calendar year 1963, which was false and fraudulent as to material matters in that it represented that the said taxpayers were entitled under the provisions of the Internal Revenue laws to claim deductions of,

\$237.50	for church donations,
40.00	for all other contributions,
154.00	for H & A insurance,
50.00	for uniforms and safety equip.,

whereas, the defendant then and there well knew that these claimed deductions were excessive and overstated and that said taxpayers were entitled to claim as deductions for said calendar year not in excess of,

\$ 27.50	for church donations,
21.00	for H & A insurance,
25.00	for uniforms and safety equip.,

and that taxpayers were not entitled to claim as deductions any amounts for all other contributions, in violation of Section 7206 (2), Internal Revenue Code; and 26 U.S.C. § 7206 (2).

## COUNT EIGHT

That on or about the 30th day of January, 1965, in the Central Division, District of Utah, Milton C. Jorn, a resident of Davis County, Utah, hereinafter called the defendant, did wilfully and knowingly aid and assist in, and counsel, procure and advise the preparation and presentation to the District Director of Internal Revenue for the Internal Revenue District of Utah, at Salt Lake City, Utah, of an income tax return of Victor D. and Pauline A. Lemmon for the calendar year 1964, which was false and fraudulent as to material matters in that it represented that the said taxpayers were entitled under the provisions of the Internal Revenue laws to claim deductions of,

\$276.20	for real estate taxes,
30.00	for ½ telephone,
48.00	for Association dues,

whereas, the defendant then and there well knew that these claimed deductions were excessive and overstated and that said taxpayers were entitled to claim as deductions for said calendar year not in excess of,

\$180.72	for real estate taxes,
14.00	for Association dues,

and that taxpayers were not entitled to claim as deductions any amounts for ½ telephone, in violation of Section 7206 (2), Internal Revenue Code; and 26 U.S.C. § 7206 (2).

## COUNT NINE

That on or about the 27th day of February, 1963, in the Central Division, District of Utah, Milton C. Jorn, a resident of Davis County, Utah, hereinafter called the defendant, did wilfully and knowingly aid and assist in, and counsel, procure and advise the preparation and presentation to the District Director of Internal Revenue for the Internal Revenue District of Utah, at Salt Lake City, Utah, of an income tax return of Lenora B. Elkington for the calendar year 1962, which was false and

fraudulent as to material matters in that it represented that the said taxpayers was entitled under the provisions of the Internal Revenue laws to claim deductions of,

\$ 85.00	for paint as repairs,
125.54	for H & A insurance,
30.00	for ½ telephone service
47.50	for special shoes,

whereas, the defendant then and there well knew that these claimed deductions were excessive and overstated and that said taxpayer was entitled to claim as deductions for said calendar year not in excess of,

\$ 40.00	for paint as repairs,
93.86	for H & A insurance,
20.00	for special shoes,

and that taxpayer was not entitled to claim as deductions any amounts for telephone, in violation of Section 7206 (2), Internal Revenue Code; and 26 U.S.C. § 7206 (2).

#### COUNT TEN

That on or about the 30th day of January, 1964, in the Central Division, District of Utah, Milton C. Jorn, a resident of Davis County, Utah, hereinafter called the defendant, did wilfully and knowingly aid and assist in, and counsel, procure and advise the preparation and presentation to the District Director of Internal Revenue for the Internal Revenue District of Utah, at Salt Lake City, Utah, of an income tax return of Lenora B. Elkington for the calendar year 1963, which was false fraudulent as to material matters in that it represented that the taxpayer was entitled under the provisions of the Internal Revenue laws to claim deductions of,

\$132.00	for H & A insurance,
30.00	for ½ telephone,
47.50	for special shoes,

whereas, the defendant then and there well knew that these claimed deductions were excessive and overstated

and that said taxpayer was entitled to claim as deductions for said calendar year not in excess of,

\$ 93.86	for H & A insurance,
20.00	for special shoes,

and that taxpayer was not entitled to claim as deductions any amounts for telephone, in violation of Section 7206 (2), Internal Revenue Code; and 26 U.S.C. § 7206 (2).

### COUNT ELEVEN

That on or about the 14th day of March, 1965, in the Central Division, District of Utah, Milton C. Jorn, a resident of Davis County, Utah, hereinafter called the defendant, did wilfully and knowingly aid and assist in, and counsel, procure and advise the preparation and presentation to the District Director of Internal Revenue for the Internal Revenue District of Utah, at Salt Lake City, Utah, of an income tax return of Lenora B. Elkington for the calendar year 1964, which was false and fraudulent as to material matters in that it represented that the taxpayer was entitled under the provisions of the Internal Revenue laws to claim deductions of,

\$132.00	for H & A insurance,
30.00	for ½ telephone,
47.50	for special shoes,
20.00	for Association dues,

whereas, the defendant then and there well knew that these claimed deductions were excessive and overstated and that said taxpayer was entitled to claim as deductions for said calendar year not in excess of,

\$ 98.72	for H & A insurance,
20.00	for special shoes,

and that taxpayer was not entitled to claim as deductions any amounts for telephone and Association dues, in violation of Section 7206 (2), Internal Revenue Code; and 26 U.S.C. § 7206 (2).

## COUNT TWELVE

That on or about the 21st day of March, 1963, in the Central Division, District of Utah, Milton C. Jorn, a resident of Davis County, Utah, hereinafter called the defendant, did wilfully and knowingly aid and assist in, and counsel, procure and advise the preparation and presentation to the District Director of Internal Revenue for the Internal Revenue District of Utah, at Salt Lake City, Utah, of an income tax return of Michael R. and Ramona M. Linnell for the calendar year 1962, which was false and fraudulent as to material matters in that it represented that the said taxpayers were entitled under the provisions of the Internal Revenue laws to claim deductions of,

\$124.30      for real estate taxes,

whereas, the defendant then and there well knew that this claimed deduction was excessive and overstated and that said taxpayers were not entitled to claim as a deduction any amount for real estate taxes, in violation of Section 7206 (2), Internal Revenue Code; and 26 U.S.C. § 7206 (2).

## COUNT THIRTEEN

That on or about the 31st day of January, 1964, in the Central Division, District of Utah, Milton C. Jorn, a resident of Davis County, Utah, hereinafter called the defendant, did wilfully and knowingly aid and assist in, and counsel, procure and advise the preparation and presentation to the District Director of Internal Revenue for the Internal Revenue District of Utah, at Salt Lake City, Utah, of an income tax return of Michael R. and Ramona M. Linnell for the calendar year 1963, which was false and fraudulent as to material matters in that it represented that the said taxpayers were entitled under the provisions of the Internal Revenue laws to claim deductions of,

\$120.00      for real estate taxes,  
45.00      for union dues and ass.,

whereas, the defendant then and there well knew that these claimed deductions were excessive and overstated

and that said taxpayers were not entitled to claim as deductions any amounts for real estate taxes, and union dues and ass., in violation of Section 7206 (2), Internal Revenue Code; and 26 U.S.C. § 7206 (2).

#### COUNT FOURTEEN

That on or about the 2nd day of February, 1965, in the Central Division, District of Utah, Milton C. Jorn, a resident of Davis County, Utah, hereinafter called the defendant, did wilfully and knowingly aid and assist in, and counsel, procure and advise the preparation and presentation to the District Director of Internal Revenue for the Internal Revenue District of Utah, at Salt Lake City, Utah, of an income tax return of M. R. and R. M. Linnell for the calendar year 1964, which was false and fraudulent as to material matters in that it represented that the said taxpayers were entitled under the provisions of the Internal Revenue laws to claim deductions of,

\$178.00	for real estate taxes,
92.00	for union dues,

whereas, the defendant then and there well knew that these claimed deductions were excessive and overstated and that said taxpayers were not entitled to claim as deductions any amounts for real estate taxes and union dues, in violation of Section 7206 (2), Internal Revenue Code; and 26 U.S.C. § 7206 (2).

#### COUNT FIFTEEN

That on or about the 27th day of February, 1963, in the Central Division, District of Utah, Milton C. Jorn, a resident of Davis County, Utah, hereinafter called the defendant, did wilfully and knowingly aid and assist in, and counsel, procure and advise the preparation and presentation to the District Director of Internal Revenue for the Internal Revenue District of Utah, at Salt Lake City, Utah, of an income tax return of Wallace R. and Selma Wardle for the calendar year 1962, which was false and fraudulent as to material matters in that it represented that the said taxpayers were entitled under

the provisions of the Internal Revenue laws to claim deductions of,

\$125.00	for L.D.S. church contributions,
25.00	for polio, heart, cancer contributions,
25.00	for all other contributions,
180.00	for H & A insurance,

whereas, the defendant then and there well knew that these claimed deductions were excessive and overstated and that said taxpayers were entitled to claim as deductions for said calendar year not in excess of,

\$ 15.00	for L.D.S. church contributions,
5.00	for polio, heart, cancer contributions,
10.00	for all other contributions,
88.92	for H & A insurance,

in violation of Section 7206 (2), Internal Revenue Code; and 26 U.S.C. § 7206 (2).

### COUNT SIXTEEN

That on or about the 26th day of January, 1964, in the Central Division, District of Utah, Milton C. Jorn, a resident of Davis County, Utah, hereinafter called the defendant, did wilfully and knowingly aid and assist in, and counsel, procure and advise the preparation and presentation to the District Director of Internal Revenue for the Internal Revenue District of Utah, at Salt Lake City, Utah, of an income tax return of Wallace R and Selma Wardle for the calendar year 1963, which was false and fraudulent as to material matters in that it represented that the said taxpayers were entitled under the provisions of the Internal Revenue laws to claim deductions of,

\$125.00	for L.D.S. church contributions,
25.00	for polio, heart, cancer contributions,
25.00	for all other contributions,
180.00	for H & A insurance,

whereas, the defendant then and there well knew that these claimed deductions were excessive and overstated

and that said taxpayers were entitled to claim as deductions for said calendar year not in excess of,

\$ 15.00	for L.D.S. church contributions,
5.00	for polio, heart, cancer contributions,
5.00	for all other contributions,
88.92	for H & A insurance,

in violation of Section 7206 (2), Internal Revenue Code; and 26 U.S.C. § 7206 (2).

### COUNT SEVENTEEN

That on or about the 30th day of January, 1965, in the Central Division, District of Utah, Milton C. Jorn, a resident of Davis County, Utah, hereinafter called the defendant, did wilfully and knowingly aid and assist in, and counsel, procure and advise the preparation and presentation to the District Director of Internal Revenue for the Internal Revenue District of Utah, at Salt Lake City, Utah, of an income tax return of Wallace R. and Selma Wardle, for the calendar year 1964, which was false and fraudulent as to material matters in that it represented that the said taxpayers were entitled under the provisions of the Internal Revenue laws to claim deductions of,

\$220.00	for H & A insurance
135.00	for L.D.S. church contributions,
25.00	for polio, heart, cancer contributions,
35.00	for other contributions,

whereas, the defendant then and there well knew that these claimed deductions were excessive and overstated and that said taxpayers were entitled to claim as deductions for said calendar year not in excess of,

\$ 88.92	for H & A insurance
35.00	for L.D.S. church contributions,
5.00	for polio, heart, cancer contributions,
5.00	for all other contributions,

in violation of Section 7206 (2), Internal Revenue Code; and 26 U.S.C. § 7206 (2).

## COUNT EIGHTEEN

That on or about the 27th day of February, 1963, in the Central Division, District of Utah, Milton C. Jorn, a resident of Davis County, Utah, hereinafter called the defendant, did wilfully and knowingly aid and assist in, and counsel, procure and advise the preparation and presentation to the District Director of Internal Revenue for the Internal Revenue District of Utah, at Salt Lake City, Utah, of an income tax return of Larry and Patsy Wardle for the calendar year 1962, which was false and fraudulent as to material matters in that it represented that the said taxpayers were entitled under the provisions of the Internal Revenue laws to claim deductions of,

\$ 30.00	for United Fund contributions,
15.00	for polio, heart, cancer contributions,
25.00	for all other contributions,
35.00	for drugs,
35.00	for ½ telephone,

whereas, the defendant then and there well knew that these claimed deductions were excessive and overstated and that said taxpayers were entitled to claim as deductions for said calendar year not in excess of,

\$ 2.00	for United Fund contributions,
2.00	for polio, heart, cancer contributions,

and that taxpayers were not entitled to claim as deductions any amounts for all other contributions, drugs, and telephone expenses, in violation of Section 7206 (2), Internal Revenue Code; and 26 U.S.C. § 7206 (2).

## COUNT NINETEEN

That on or about the 22nd day of February, 1964, in the Central Division, District of Utah, Milton C. Jorn, a resident of Davis County, Utah, hereinafter called the defendant, did wilfully and knowingly aid and assist in, and counsel, procure and advise the preparation and presentation to the District Director of Internal Revenue for the Internal Revenue District of Utah, at Salt Lake City, Utah, of an income tax return of Martin Larry

and Patsy Wardle for the calendar year 1963, which was false and fraudulent as to material matters in that it represented that the said taxpayers were entitled under the provisions of the Internal Revenue laws to claim deductions of,

\$ 30.00	for United Fund contributions,
20.00	for polio, heart, cancer contributions,
25.00	for all other contributions
27.67	for medicine and drugs,
35.00	for ½ telephone,

whereas, the defendant then and there well knew that these claimed deductions were excessive and overstated and that said taxpayers were entitled to claim as deductions for said calendar year not in excess of,

\$ 2.00	for United Fund contributions,
2.00	for polio, heart, cancer contributions,

and that taxpayers were not entitled to claim as deductions any amounts for all other contributions, medicine and drugs, and telephone expenses, in violation of Section 7206 (2), Internal Revenue Code; and 26 U.S.C. § 7206 (2).

## COUNT TWENTY

That on or about the 17th day of February, 1965, in the Central Division, District of Utah, Milton C. Jorn, a resident of Davis County, Utah, hereinafter called the defendant, did wilfully and knowingly aid and assist in, and counsel, procure and advise the preparation and presentation to the District Director of Internal Revenue for the Internal Revenue District of Utah, at Salt Lake City, Utah, of an income tax return of M. Larry and Patsy Wardle for the calendar year 1964, which was false and fraudulent as to material matters in that it represented that the said taxpayers were entitled under the provisions of the Internal Revenue laws to claim deductions of,

\$ 43.25	for medicine and drugs,
30.00	for United Fund contributions,
20.00	for polio, heart, cancer contributions,
25.00	for all other contributions,
93.00	for Association-beauty, other deductions,
37.50	for 1/2 telephone,

whereas, the defendant then and there well knew that these claimed deductions were excessive and overstated and that said taxpayers were entitled to claim as deductions for said calendar year not in excess of,

\$ 2.00	for United Fund contributions,
2.00	for polio, heart, cancer contributions,
23.00	for Association-beauty, other deductions,

and that taxpayers were not entitled to claim as deductions any amounts for medicine and drugs, all other contributions, and telephone expenses, in violation of Section 7206 (2), Internal Revenue Code; and 26 U.S.C. § 7206 (2).

#### COUNT TWENTY-ONE

That on or about the 22nd day of February, 1964, in the Central Division, District of Utah, Milton C. Jorn, a resident of Davis County, Utah, hereinafter called the defendant, did wilfully and knowingly aid and assist in, and counsel, procure and advise the preparation and presentation to the District Director of Internal Revenue for the Internal Revenue District of Utah, at Salt Lake City, Utah, of an income tax return of George W. and Lana Wardle for the calendar year 1963, which was false and fraudulent as to material matters in that it represented that the said taxpayers were entitled under the provisions of the Internal Revenue laws to claim deductions of,

\$160.00	for L.D.S. church contributions,
35.00	for all other contributions,
130.44	for H & A insurance,
30.00	for union dues,
30.00	for 1/2 telephone,
65.00	for safety equip., uniforms and tools,

whereas, the defendant then and there well knew that these claimed deductions were excessive and overstated and that said taxpayers were entitled to claim deductions for said calendar year not in excess of,

\$ 5.00	for L.D.S. church contributions,
5.00	for all other contributions,
9.90	for H & A insurance,
6.00	for safety equip., uniforms and tools,

and that taxpayers were not entitled to claim as deductions any amounts for union dues, and telephone expenses, in violation of Section 7206 (2), Internal Revenue Code; and 26 U.S.C. § 7206 (2).

### COUNT TWENTY-TWO

That on or about the 17th day of February, 1965, in the Central Division, District of Utah, Milton C. Jorn, a resident of Davis County, Utah, hereinafter called the defendant, did wilfully and knowingly aid and assist in, and counsel, procure and advise the preparation and presentation to the District Director of Internal Revenue for the Internal Revenue District of Utah, at Salt Lake City, Utah, of an income tax return of George M. and Lana Wardle for the calendar year 1964, which was false and fraudulent as to material matters in that it represented that the said taxpayers were entitled under the provisions of the Internal Revenue laws to claim deductions of,

\$ 45.50	for medicine and drugs,
190.00	for H & A insurance,
25.00	for x-rays,
165.00	for L.D.S. church contributions,
35.00	for United Fund contributions,
15.00	for all other contributions,
60.00	for union dues,
30.00	for ½ telephone,
70.00	for safety equipment,

whereas, the defendant then and there well knew that these claimed deductions were excessive and overstated and

that said taxpayers were entitled to claim as deductions for said calendar year not in excess of,

\$127.14	for H & A insurance,
15.00	for L.D.S. church contributions,
2.00	for all other contributions,
30.00	for union dues,
15.00	for safety equipment,
3.00	for United Fund contributions,

and that taxpayers were not entitled to claim as deductions any amounts for medicine and drugs, x-rays and telephone expenses, in violation of Section 7206 (2), Internal Revenue Code; and 26 U.S.C. § 7206 (2).

### COUNT TWENTY-THREE

That on or about the 27th day of February, 1963, in the Central Division, District of Utah, Milton C. Jorn, a resident of Davis County, Utah, hereinafter called the defendant, did wilfully and knowingly aid and assist in, and counsel, procure and advise the preparation and presentation to the District Director of Internal Revenue for the Internal Revenue District of Utah, at Salt Lake City, Utah, of an income tax return of Ramon D. and Villera V. Wardle for the calendar year 1962, which was false and fraudulent as to material matters in that it represented that the said taxpayers were entitled under the provisions of the Internal Revenue laws to claim deductions of,

\$ 90.00	for L.D.S. church contributions,
30.00	for United Fund contributions,
30.00	for all other contributions,
122.50	for real estate taxes,
180.00	for H & A insurance,
100.00	for Dr. Wilson,
150.00	for Dr. Kerr,
80.00	for St. Marks,
100.00	for union dues,
30.00	for ½ telephone,
50.00	for uniforms of profession,

whereas, the defendant then and there well knew that these claimed deductions were excessive and overstated and that said taxpayers were entitled to claim as deductions for said calendar year not in excess of,

\$ 25.00	for L.D.S. church contributions,
8.00	for United Fund contributions,
2.00	for all other contributions,
70.00	for Dr. Wilson,
119.00	for Dr. Kerr,
50.00	for St. Marks,
30.00	for union dues,

and that taxpayers were not entitled to claim as deductions any amounts for real estate taxes, H & A insurance, telephone, and uniforms of profession, in violation of Section 7206 (2), Internal Revenue Code; and 26 U.S.C. § 7206 (2).

#### COUNT TWENTY-FOUR

That on or about the 22nd day of February, 1964, in the Central Division, District of Utah, Milton C. Jorn, a resident of Davis County, Utah, hereinafter called the defendant, did wilfully and knowingly aid and assist in, and counsel, procure and advise the preparation and presentation to the District Director of Internal Revenue for the Internal Revenue District of Utah, at Salt Lake City, Utah, of an income tax return of Ramon D. and Villera V. Wardle for the calendar year 1963, which was false and fraudulent as to material matters in that it represented that the said taxpayers were entitled under the provisions of the Internal Revenue laws to claim deductions of,

\$125.00	for L.D.S. church contributions,
30.00	for United Fund contributions,
25.00	for all other contributions,
30.00	for polio, heart, cancer contributions,
165.00	for real estate taxes,
224.00	for H & A insurance,
25.00	for glasses
260.00	for union dues,
30.00	for ½ telephone,
50.00	for uniforms,

whereas, the defendant then and there well knew that these claimed deductions were excessive and overstated and that said taxpayers were entitled to claim as deductions for said calendar year not in excess of,

\$ 25.00	for L.D.S. church contributions,
2.00	for United Fund contributions,
1.00	for all other contributions,
2.00	for polio, heart, cancer contributions,
90.00	for union dues,

and that taxpayers were not entitled to claim as deductions any amounts for real estate taxes, H & A insurance, glasses, telephone, and uniforms, in violation of Section 7206 (2), Internal Revenue Code; and 26 U.S.C. § 7206 (2).

#### COUNT TWENTY-FIVE

That on or about the 26th day of February, 1965, in the Central Division, District of Utah, Milton C. Jorn, a resident of Davis County, Utah, hereinafter called the defendant, did wilfully and knowingly aid and assist in, and counsel, procure and advise the preparation and presentation to the District Director of Internal Revenue for the Internal Revenue District of Utah, at Salt Lake City, Utah, of an income tax return of Ramon D. and Villera Wardle for the calendar year 1964, which was false and fraudulent as to material matters in that it represented that the said taxpayers were entitled under the provisions of the Internal Revenue laws to claim deductions of,

\$254.00	for H & A insurance deduction,
30.00	for St. Marks deduction,
125.00	for L.D.S. church contributions,
30.00	for United Fund contributions,
20.00	for all other contributions,
30.00	for polio, heart, cancer contributions,
412.50	for home mortgage interest,
215.00	for real estate taxes,
260.00	for union dues,
35.00	for ½ telephone,
50.00	for work clothes,

whereas, the defendant then and there well knew that these claimed deductions were excessive and overstated and that said taxpayers were entitled to claim as deductions for said calendar year not in excess of,

\$ 10.00	for St. Marks deduction,
25.00	for L.D.S. church contributions,
2.00	for United Fund contributions,
1.00	for all other contributions,
2.00	for polio, heart, cancer contributions,
190.00	for union dues,

and that taxpayers were not entitled to claim as deductions any amounts for H & A insurance, home mortgage interest, real estate taxes, telephone expenses, and work clothes, in violation of Section 7206 (2), Internal Revenue Code; and 26 U.S.C. § 7206 (2).

DATED this 23 day of Feb., 1968.

WILLIAM T. THURMAN  
United States Attorney

WALKER E. ANDERSON  
Assistant United States Attorney

## AMENDED MINUTE ENTRY (1st page only)

August 27, 1968

Judge Ritter

Cr 9-68

UNITED STATES OF AMERICA

vs.

MILTON C. JORN

This matter came on before the court at 10:00 a.m. for jury trial. F. T. Wetzel, Esq., Assistant United States Attorney, appeared for the plaintiff. The defendant was present and represented by counsel, Denis Morrill, Esq.

No challenges for cause were exercised. Two (2) peremptory challenges were exercised by the plaintiff, three (3) peremptory challenges were exercised by the defendant.

The following jurors were duly impaneled and sworn:

Floyd M. Johnson	Edwin Buck
Walter W. Willey	Barbara Tanner
O. D. Bruce	Mrs. Manda Condie
Boyd E. Anderson	George M. Calder
Robert B. Allen	Edward C. Adair
Clarence L. Anderson	Charles H. Baldwin

The jurors were instructed as to their conduct during this and all future recesses during the trial and excused to 2:00 p.m.

All other jurors not impaneled in this case were excused permanently with the thanks of the court.

Trial resumed at 2:00 p.m. with counsel and parties as heretofore listed present.

Plaintiff's exhibits Nos. 1 through 11 inclusive were marked for identification.

Out of the presence of the jury, plaintiff moved to dismiss Counts 1 through 11 inclusive, 18, 19, and 20 of the information. Motion was granted by the court, and an amended information was filed. Defendant waived reading of the information and entered a plea of not guilty to each of eleven (11) counts of the information. The jury was returned to the jury box.

Mr. Morrill moved to invoke the exclusion of witness rule. Motion granted, and all witnesses were admonished by the court and withdrew from the court room.

IN THE UNITED STATES DISTRICT COURT FOR  
THE DISTRICT OF UTAH, CENTRAL DIVISION

Filed in United States District Court, District of Utah.  
Time: Aug. 27, 1968 Andrew John Brau, Clerk.

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CR-9-68

UNITED STATES OF AMERICA, PLAINTIFF

vs.

MILTON C. JORN, DEFENDANT

---

AMENDED INFORMATION

Vio. 26 U.S.C. § 7206 (2). WILFULLY AIDING AND  
ASSISTING IN THE PREPARATION & PRESENTA-  
TION OF FALSE & FRAUDULENT INCOME TAX  
RETURNS.

The United States Attorney charges:

COUNT ONE

That on or about the 21st day of March, 1963, in the Central Division, District of Utah, Milton C. Jorn, a resident of Davis County, Utah, hereinafter called the defendant, did wilfully and knowingly aid and assist in, and counsel, procure and advise the preparation and presentation to the District Director of Internal Revenue for the Internal Revenue District of Utah, at Salt Lake City, Utah, of an income tax return of Michael R. and Ramona M. Linnell for the calendar year 1962, which was false and fraudulent as to material matters in that it represented that the said taxpayers were entitled under the provisions of the Internal Revenue laws to claim deductions of,

\$124.30      for real estate taxes,

whereas, the defendant then and there well knew that this claimed deduction was excessive and overstated and

that said taxpayers were not entitled to claim as a deduction any amount for real estate taxes, in violation of Section 7206 (2), Internal Revenue Code; and 26 U.S.C. § 7206 (2).

### COUNT TWO

That on or about the 31st day of January, 1964, in the Central Division, District of Utah, Milton C. Jorn, a resident of Davis County, Utah, hereinafter called the defendant, did wilfully and knowingly aid and assist in, and counsel, procure and advise the preparation and presentation to the District Director of Internal Revenue for the Internal Revenue District of Utah, at Salt Lake City, Utah, of an income tax return of Michael R. and Ramona M. Linnell for the calendar year 1963, which was false and fraudulent as to material matters in that it represented that the said taxpayers were entitled under the provisions of the Internal Revenue laws to claim deductions of,

\$120.00	for real estate taxes,
45.00	for union dues and ass.,

whereas, the defendant then and there well knew that these claimed deductions were excessive and overstated and that said taxpayers were not entitled to claim as deductions any amounts for real estate taxes, and union dues and ass., in violation of Section 7206 (2), Internal Revenue Code; and 26 U.S.C. § 7206 (2).

### COUNT THREE

That on or about the 2nd day of February, 1965, in the Central Division, District of Utah, Milton C. Jorn, a resident of Davis County, Utah, hereinafter called the defendant, did wilfully and knowingly aid and assist in, and counsel, procure and advise the preparation and presentation to the District Director of Internal Revenue for the Internal Revenue District of Utah, at Salt Lake City, Utah, of an income tax return of M. R. and R. M. Linnell for the calendar year 1964, which was false and fraudulent as to material matters in that it represented

that the said taxpayers were entitled under the provisions of the Internal Revenue laws to claim deductions of,

\$178.00	for real estate taxes,
92.00	for union dues,

whereas, the defendant then and there well knew that these claimed deductions were excessive and overstated and that said taxpayers were not entitled to claim as deductions any amounts for real estate taxes and union dues, in violation of Section 7206 (2), Internal Revenue Code; and 26 U.S.C. § 7206 (2).

#### COUNT FOUR

That on or about the 27th day of February, 1963, in the Central Division, District of Utah, Milton C. Jorn, a resident of Davis County, Utah, hereinafter called the defendant, did wilfully and knowingly aid and assist in, and counsel, procure and advise the preparation and presentation to the District Director of Internal Revenue for the Internal Revenue District of Utah, at Salt Lake City, Utah, of an income tax return of Ramon D. and Villera V. Wardle for the calendar year 1962, which was false and fraudulent as to material matters in that it represented that the said taxpayers were entitled under the provisions of the Internal Revenue laws to claim deductions of,

\$ 90.00	for L.D.S. church contributions,
30.00	for United Fund contributions,
30.00	for all other contributions
122.50	for real estate taxes,
180.00	for H & A insurance,
100.00	for Dr. Wilson,
150.00	for Dr. Kerr,
80.00	for St. Marks,
100.00	for Union dues,
30.00	for ½ telephone,
50.00	for uniforms of profession,

whereas, the defendant then and there well knew that these claimed deductions were excessive and overstated

and that said taxpayers were entitled to claim as deductions for said calendar year not in excess of,

\$ 25.00	for L.D.S. church contributions,
3.00	for United Fund contributions,
2.00	for all other contributions,
70.00	for Dr. Wilson,
119.00	for Dr. Kerr,
50.00	for St. Marks,
30.00	for union dues,

and that taxpayers were not entitled to claim as deductions any amounts for real estate taxes, H & A insurance, telephone, and uniforms of profession, in violation of Section 7206 (2), Internal Revenue Code; and 26 U.S.C. § 7206 (2).

#### COUNT FIVE

That on or about the 22nd day of February, 1964, in the Central Division, District of Utah, Milton C. Jorn, a resident of Davis County, Utah, hereinafter called the defendant, did wilfully and knowingly aid and assist in, and counsel, procure and advise the preparation and presentation to the District Director of Internal Revenue for the Internal Revenue District of Utah, at Salt Lake City, Utah, of an income tax return of Ramon D. and Villera V. Wardle for the calendar year 1963, which was false and fraudulent as to material matters in that it represented that the said taxpayers were entitled under the provisions of the Internal Revenue laws to claim deductions of,

\$125.00	for L.D.S. church contributions,
30.00	for United Fund contributions,
25.00	for all other contributions,
30.00	for polio, heart, cancer contributions,
165.00	for real estate taxes,
224.00	for H & A insurance,
25.00	for glasses
260.00	for union dues,
30.00	for ½ telephone,
50.00	for uniforms,

whereas, the defendant then and there well knew that these claimed deductions were excessive and overstated and that said taxpayers were entitled to claim as deductions for said calendar year not in excess of,

\$ 25.00	for L.D.S. church contributions,
2.00	for United Fund contributions,
1.00	for all other contributions,
2.00	for polio, heart, cancer contributions,
90.00	for union dues,

and that taxpayers were not entitled to claim as deductions any amounts for real estate taxes, H & A insurance, glasses, telephone, and uniforms, in violation of Section 7206 (2), Internal Revenue Code; and 26 U.S.C. § 7206 (2).

#### COUNT SIX

That on or about the 26th day of February, 1965, in the Central Division, District of Utah, Milton C. Jorn, a resident of Davis County, Utah, hereinafter called the defendant, did wilfully and knowingly aid and assist in, and counsel, procure and advise the preparation and presentation to the District Director of Internal Revenue for the Internal Revenue District of Utah, at Salt Lake City, Utah, of an income tax return of Ramon D. and Villera Wardle for the calendar year 1964, which was false and fraudulent as to material matters in that it represented that the said taxpayers were entitled under the provisions of the Internal Revenue laws to claim deductions of,

\$254.00	for H & A insurance deduction,
30.00	for St. Marks deduction,
125.00	for L.D.S. church contributions,
30.00	for United Fund contributions,
20.00	for all other contributions,
30.00	for polio, heart, cancer contributions,
412.50	for home mortgage interest,
215.00	for real estate taxes,
260.00	for union dues,
35.00	for ½ telephone,
50.00	for work clothes,

whereas, the defendant then and there well knew that these claimed deductions were excessive and overstated and that said taxpayers were entitled to claim as deductions for said calendar year not in excess of,

\$ 10.00	for St. Marks deduction,
25.00	for L.D.S. church contributions,
2.00	for United Fund contributions,
1.00	for all other contributions,
2.00	for polio, heart, cancer contributions,
190.00	for union dues,

and that taxpayers were not entitled to claim as deductions any amounts for H & A insurance, home mortgage interest, real estate taxes, telephone expense, and work clothes, in violation of Section 7206 (2), Internal Revenue Code; and 26 U.S.C. § 7206 (2).

#### COUNT SEVEN

That on or about the 22nd day of February, 1964, in the Central Division, District of Utah, Milton C. Jorn, a resident of Davis County, Utah, hereinafter called the defendant, did wilfully and knowingly aid and assist in, and counsel, procure and advise the preparation and presentation to the District Director of Internal Revenue for the Internal Revenue District of Utah, at Salt Lake City, Utah, of an income tax return of George W. and Lana Wardle for the calendar year 1963, which was false and fraudulent as to material matters in that it represented that the said taxpayers were entitled under the provisions of the Internal Revenue laws to claim deductions of,

\$160.00	for L.D.S. church contributions,
35.00	for all other contributions,
130.44	for H & A insurance,
30.00	for union dues,
30.00	for ½ telephone,
65.00	for safety equip., uniforms and tools,

whereas, the defendant then and there well knew that these claimed deductions were excessive and overstated

and that said taxpayers were entitled to claim as deductions for said calendar year not in excess of,

\$ 5.00	for L.D.S. church contributions,
5.00	for all other contributions,
9.90	for H & A insurance,
6.00	for safety equip., uniforms and tools,

and that taxpayers were not entitled to claim as deductions any amounts for union dues, and telephone expenses, in violation of Section 7206 (2), Internal Revenue Code; and 26 U.S.C. § 7206 (2).

### COUNT EIGHT

That on or about the 17th day of February, 1965, in the Central Division, District of Utah, Milton C. Jorn, a resident of Davis County, Utah, hereinafter called the defendant, did wilfully and knowingly aid and assist in, and counsel, procure and advise the preparation and presentation to the District Director of Internal Revenue for the Internal Revenue District of Utah, at Salt Lake City, Utah, of an income tax return of George M. and Lana Wardle for the calendar year 1964, which was false and fraudulent as to material matters in that it represented that the said taxpayers were entitled under the provisions of the Internal Revenue laws to claim deductions of,

\$ 45.50	for medicine and drugs,
190.00	for H & A insurance,
25.00	for x-rays,
165.00	for L.D.S. church contributions,
35.00	for United Fund contributions,
15.00	for all other contributions,
60.00	for union dues,
30.00	for 1/2 telephone,
70.00	for safety equipment,

whereas, the defendant then and there well knew that these claimed deductions were excessive and overstated and that said taxpayers were entitled to claim as deductions for said calendar year not in excess of,

\$127.14	for H & A insurance,
15.00	for L.D.S. church contributions,
2.00	for all other contributions,
30.00	for union dues,
15.00	for safety equipment,
3.00	for United Fund contributions,

and that taxpayers were not entitled to claim as deductions any amounts for medicine and drugs, x-rays and telephone expenses, in violation of Section 7206 (2), Internal Revenue Code; and 26 U.S.C. § 7206 (2).

### COUNT NINE

That on or about the 27th day of February, 1963, in the Central Division, District of Utah, Milton C. Jorn, a resident of Davis County, Utah, hereinafter called the defendant, did wilfully and knowingly aid and assist in, and counsel, procure and advise the preparation and presentation to the District Director of Internal Revenue for the Internal Revenue District of Utah, at Salt Lake City, Utah, of an income tax return of Wallace R. and Selma Wardle for the calendar year 1962, which was false and fraudulent as to material matters in that it represented that the said taxpayers were entitled under the provisions of the Internal Revenue laws to claim deductions of,

\$125.00	for L.D.S. church contributions,
25.00	for polio, heart, cancer contributions,
25.00	for all other contributions,
180.00	for H & A insurance,

whereas, the defendant then and there well knew that these claimed deductions were excessive and overstated and that said taxpayers were entitled to claim as deductions for said calendar year not in excess of,

\$ 15.00	for L.D.S. church contributions,
5.00	for polio, heart, cancer contributions,
10.00	for all other contributions,
88.92	for H & A insurance,

in violation of Section 7206 (2), Internal Revenue Code; and 26 U.S.C. § 7206 (2).

### COUNT TEN

That on or about the 26th day of January, 1964, in the Central Division, District of Utah, Milton C. Jorn, a resident of Davis County, Utah, hereinafter called the defendant, did wilfully and knowingly aid and assist in, and counsel, procure and advise the preparation and presentation to the District Director of Internal Revenue for the Internal Revenue District of Utah, at Salt Lake City, Utah, of an income tax return of Wallace R. and Selma Wardle for the calendar year 1963, which was false and fraudulent as to material matters in that it represented that the said taxpayers were entitled under the provisions of the Internal Revenue laws to claim deductions of,

\$125.00	for L.D.S. church contributions,
25.00	for polio, heart, cancer contributions,
25.00	for all other contributions,
180.00	for H & A insurance,

whereas, the defendant then and there well knew that these claimed deductions were excessive and overstated and that said taxpayers were entitled to claim as deductions for said calendar year not in excess of,

\$ 15.00	for L.D.S. church contributions,
5.00	for polio, heart, cancer contributions,
5.00	for all other contributions,
88.92	for H & A insurance,

in violation of Section 7206 (2), Internal Revenue Code; and 26 U.S.C. § 7206 (2).

### COUNT ELEVEN

That on or about the 30th day of January, 1965, in the Central Division, District of Utah, Milton C. Jorn, a resident of Davis County, Utah, hereinafter called the defendant, did wilfully and knowingly aid and assist in, and counsel, procure and advise the preparation and

presentation to the District Director of Internal Revenue for the Internal Revenue District of Utah, at Salt Lake City, Utah, of an income tax return of Wallace R. and Selma Wardle, for the calendar year 1964, which was false and fraudulent as to material matters in that it represented that the said taxpayers were entitled under the provisions of the Internal Revenue laws to claim deductions of,

\$220.00	for H & A insurance
135.00	for L.D.S. church contributions,
25.00	for polio, heart, cancer contributions,
35.00	for other contributions,

whereas, the defendant then and there well knew that these claimed deductions were excessive and overstated and that said taxpayers were entitled to claim as deductions for said calendar year not in excess of,

\$ 88.92	for H & A insurance,
35.00	for L.D.S. church contributions,
5.00	for polio, heart, cancer contributions,
5.00	for all other contributions,

in violation of Section 7206 (2), Internal Revenue Code; and 26 U.S.C. § 7206 (2).

DATED this 19th day of August, 1968.

WILLIAM T. THURMAN  
United States Attorney

By /s/ F. T. Wetzel  
F. T. WETZEL  
Assistant United States Attorney

[fol. 1]

IN THE UNITED STATES DISTRICT COURT FOR  
THE DISTRICT OF UTAH  
CENTRAL DIVISION

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Cr 9-68

UNITED STATES OF AMERICA, PLAINTIFF

-v-

MILTON C. JORN, DEFENDANT

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Salt Lake City, Utah  
August 27, 1968

BEFORE: The Honorable WILLIS W. RITTER  
Chief Judge

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TRANSCRIPT OF PROCEEDINGS

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APPEARANCES:

For the Plaintiff:

F. T. WETZEL  
Assistant U. S. Attorney  
200 P. O. & Courthouse Bldg.  
Salt Lake City, Utah

For the Defendant:

DENIS R. MORRILL  
Attorney at Law  
206 El Paso Natural Gas Bldg.  
Salt Lake City, Utah

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[fol. 2]

August 27, 1968

THE COURT: Suppose we call the jury in the Jern case and then I can excuse the rest of the jurors.

(Whereupon a jury of twelve was duly impaneled and sworn.)

THE COURT: Now, will you folks come back here at two o'clock this afternoon. I think maybe we will be ready to go on with the case at that time.

. . . .

#### AFTERNOON SESSION

THE COURT: Now, what is this about? What is it you wanted to do?

MR. WETZEL: Your Honor, this case was originally filed by Mr. Anderson. It had 25 counts. In going over the transcript of the preliminary hearing, the memories of a number of the witnesses simply were not sufficient, in my estimation, to justify presenting them to the court. I would move that counts 1 through 11 and 18, 19, and 20 be dismissed and that we be permitted to file an amended information showing only the eleven remaining counts so that the defendant would not be prejudiced by showing something he is not charged with.

I have discussed the matter with counsel for the defense and given him a copy of the proposed amended [fol. 3] information some days ago.

THE COURT: Maybe if we give you a little more time you will dismiss some more. This is a whole bundle of two-bit stuff, it looks to me like.

MR. WETZEL: Well, your Honor, there are just four taxpayers. There would have been eight others, which I don't—I think if we don't make a case on eleven it just isn't there, because their memories—they just said, "I don't remember as to these items." There will be just four taxpayers. There will be five, including one wife, but it will be the returns of just four husband and wife taxpayers. I think we need that many to show a pattern.

THE COURT: Well, I will tell you what I am going to do. How many do you want to dismiss in all?

MR. WETZEL: Fourteen.

THE COURT: All right. Now, here are 25 counts charged against the man, and you want to dismiss fourteen of them today, so you have eleven left.

MR. WETZEL: Yes, your Honor.

THE COURT: Well, that indicates to me that you haven't completed your investigation in this matter.

MR. WETZEL: No, your Honor. I think the investigation was well prepared. It is just that the witnesses' memories at the preliminary hearing were just lacking.

THE COURT: Well, you see, that wasn't prepared [fol. 4] very well then. That is why I like a preliminary hearing. That is where you fellows have to show your hand, and it lets the defendant know what he has to meet, and it also lets you folks know where the holes in your case are. I am not so sure we should proceed in this state of affairs.

What do you say, Counsel?

MR. MORRILL: Well, your Honor, I don't really know what I can say. I can't see—

THE COURT: Where does this man live?

MR. MORRILL: He lives in Bountiful, your Honor.

THE COURT: Bountiful?

MR. MORRILL: Yes, sir.

THE COURT: Is he a lawyer?

MR. MORRILL: No, your Honor. At the present time he works on a construction crew.

THE COURT: What was he doing here?

MR. MORRILL: At this time he was preparing income tax returns for other people.

THE COURT: Was he an accountant?

MR. MORRILL: He has had accounting training.

THE COURT: He has had some accounting training?

MR. MORRILL: Yes, sir.

THE COURT: He has quit the business now?

MR. MORRILL: Yes, sir. He hasn't prepared returns for—what, two years?

[fol. 5] THE DEFENDANT: Since 1964.

MR. MORRILL: Since 1964. Since that time.

THE COURT: What is the penalty for this?

MR. WETZEL: Not more than five thousand dollars or three years or both on each count.

THE COURT: Well, after I recessed this morning, I looked at this file, went through those counts. One of them I remember. He took \$90 church donation, and they reduced that to 75. Now that is a big item, that is. That is one count, part of one count.

MR. MORRILL: Well, your Honor, if I might point this out. This would be one of our legal points, that the materiality—The statute says "material matter," and the materiality of these items would be one of our legal arguments.

THE COURT: How many witnesses are you going to have, Mr. Wetzel?

MR. WETZEL: One from the Director's office to lay ground work for the returns and five taxpayers.

THE COURT: Well, how long is this case going to take?

MR. WETZEL: Well, unless there is extensive cross-examination, I think we should be able to finish this afternoon.

THE COURT: Well, on your representation that we [fol. 6] will be through this afternoon we will start then. Do you want to start before you file your amended information?

MR. WETZEL: No, your Honor. May the record show that I have furnished a copy to defense counsel.

THE COURT: All right, bring the jury in.

THE CLERK: Your Honor, does he have to be arraigned on this amended complaint?

THE COURT: Yes, I guess we ought to arraign him on the amended complaint.

Tell him to keep the jury out.

THE CLERK: Do you want it read?

MR. MORRILL: No, we have waived the reading.

MR. WETZEL: The defendant is before the court for arraignment on eleven counts of alleged violation of 26 USC 7206(2), wilfully aiding and assisting in the

preparation and presentation of false and fraudulent income tax returns. Maximum penalty on each count, \$5,000, not more than three years, or both.

THE COURT: All right, is he ready to plead?

MR. MORRILL: Ready to plead.

THE COURT: Take his plea.

THE CLERK: Milton C. Jorn, as to the amended information before this court what is your plea as to count 1?

THE DEFENDANT: Not guilty.

[fol. 7] THE CLERK: As to count 2?

THE DEFENDANT: Not guilty.

THE CLERK: Count 3?

THE DEFENDANT: Not guilty.

THE CLERK: Count 4?

THE DEFENDANT: Not guilty.

THE CLERK: Count 5?

THE DEFENDANT: Not guilty.

THE CLERK: Count 6?

THE DEFENDANT: Not guilty.

THE CLERK: Count 7?

THE DEFENDANT: Not guilty.

THE CLERK: Count 8?

THE DEFENDANT: Not guilty.

THE CLERK: Count 9?

THE DEFENDANT: Not guilty.

THE CLERK: Count 10?

THE DEFENDANT: Not guilty.

THE CLERK: Count 11?

THE DEFENDANT: Not guilty.

THE CLERK: Not guilty as to all eleven counts, your Honor.

THE COURT: Now, ordinarily I wouldn't rush right into the trial so soon after the filing of the amended information. If you folks want some additional time to get [fol. 8] ready, I won't stand in your way.

MR. MORRILL: No, your Honor, I believe we have had sufficient time.

THE COURT: You are ready to proceed?

MR. MORRILL: Yes, sir.

THE COURT: And you are ready?

MR. WETZEL: Yes, sir.

THE COURT: All right, call the jury in.

(Jury in the box.)

THE COURT: Proceed.

MR. WETZEL: Your Honor, Counsel for the defense—

THE COURT: I don't think you need any opening statement.

MR. WETZEL: All right. Mr. Jensen, Joell Jensen.

MR. MORRILL: Due to the repetitive nature of some of these witnesses I would like to have them excused.

THE COURT: All right. Keep them available so we do not lose any time, Marshal.

THE MARSHAL: Yes, sir. Will the witnesses please come this way.

MR. WETZEL: Mr. Jensen, you may stay. You are the first.

THE COURT: Now, you witnesses are to remain out of the courtroom during the testimony. We will bring one in at a time. You are to remain out of the court-[fol. 9] room, and you are to do something else while you are out there, out of the courtroom waiting for your turn to come in and testify: You are very strongly admonished not to discuss any of the matters involved in this lawsuit among yourselves out there. Do not discuss this case at all or any of the matters you are involved in. Don't let anybody discuss them with you and don't discuss them among yourselves.

All right.

(Witnesses excused.)

### JOELL A. JENSEN

called as a witness on behalf of the plaintiff, being first duly sworn, was examined and testified as follows:

### DIRECT EXAMINATION

BY MR. WETZEL:

Q Will you state your name and address, sir.

A My name is Joell A. Jensen. The first name is

spelled (spelling) J-o-e-l-l. My address is: In care of the District Director's office in Salt Lake City.

Q What is your occupation?

A My occupation is chief, collection division.

Q How long have you been so employed?

A Six years.

Q What are your duties in that capacity?

A Part of my duties are to supervise the receipt of tax returns, the processing of tax returns, and the storage [fol. 10] age and maintenance of the tax return.

(Plaintiff's Exhibits Nos. 1 thru 11 were thereupon marked for identification.)

Q (By Mr. Wetzel) I hand you what has been marked for identification as Plaintiff's Exhibits 1 through 11 and ask you to examine them and identify them, if you can.

A Exhibit No. 1 is a 1962 individual income tax return.

THE COURT: Can't you get a stipulation from counsel about those? What is the use of having him just recite what appears obvious: that is, they are income tax returns.

MR. MORRILL: We would stipulate they are income tax returns.

THE COURT: From the office of the Director.

MR. MORRILL: Yes.

THE COURT: Have them marked.

MR. WETZEL: They are marked already, your Honor.

or.

THE COURT: One exhibit?

MR. WETZEL: One through 11, your Honor.

THE COURT: Each one a different exhibit?

MR. WETZEL: Yes. They have been marked, your Honor.

Honor.

THE COURT: All right, offer them.

MR. WETZEL: I offer them in evidence.

THE COURT: Any objection?

MR. MORRILL: No objection.

[fol. 11] THE COURT: Received in evidence.

(The documents marked Plaintiff's Exhibits Nos. 1 thru 11 for identification were received in evidence.)

MR. WETZEL: I have no further questions.

THE COURT: Step down.

(Witness excused.)

THE COURT: Well, who is your next witness?

MR. WETZEL: Mr. Linnell.

THE CLERK: Be sworn, sir.

(Whereupon the witness was duly sworn.)

MR. MORRILL: Your Honor, may I make a statement.

THE COURT: Surely.

MR. MORRILL: In view of the transcript in the preliminary hearing in this matter, it is my feeling that each of these taxpayers should be warned as to his Constitutional rights before testifying, because I feel there is a possibility of a violation of the law.

THE COURT: Well, we wouldn't want anybody to talk himself into a federal penitentiary here, so what the court has to say to you is this: that the defendant on trial is charged with wilfully and knowingly aiding and assisting in, and counseling, procuring and advising in the preparation and presentation to the District Director of Internal Revenue for the Internal Revenue District of Utah income tax returns which are false and fraudulent as to material matters; and they then spell out in [fol. 12] what particular.

You are a taxpayer, and I suppose they are going to ask you what he counseled and advised you to do; and, if this return should turn out to be false and fraudulent, as the charge says it is, you have a Constitutional right. The Constitution of the United States gives you several rights. In the first place, you don't have to say a word at all, to anybody, investigator or anybody else, until you talk to your attorney and see what his advice would be in the matter.

Now, an attorney is a very important fellow in a situation like this. I don't care how brilliant a layman may think he is—he may be—anybody that is in that kind of a situation needs a lawyer to talk to him about it before he opens his mouth and puts his foot in it. That is his right.

Now, another Constitutional right you have is to say nothing at all if you don't want to. That is the Fifth Amendment to the Constitution of the United States. You have the right to just say nothing. That is involved in what we lawyers call the right against self-incrimination. That Constitutional right means, in everyday layman's talk, that the Government has to produce evidence, has the burden to produce the evidence, has the burden to produce enough evidence to convince the jury beyond a reasonable doubt. You are presumed innocent. You need not say anything if you do not want to. The Government has the burden, and the Fifth Amendment means [fol. 13] that the Government cannot get the evidence to convict you from your own mouth. You have the right to remain silent.

All right, those are your very important rights. Now, you don't need to say anything if you don't want to. You have the right to talk to a lawyer if you want to; or, if at any time during the interrogation you decide you want a lawyer, you can have one. If you don't have the money to hire a lawyer, the court will appoint one for you at no expense to you at all. We don't have people convicted because they can't afford to hire a lawyer. They are provided with a lawyer if they need one, want one, don't have the means to hire one. You have the right against self-incrimination. They are not entitled to interrogate you about anything if you don't want them to.

Well, what do you want to do?

THE WITNESS: Your Honor, my wife and I have had it pointed out that our returns have information in them that we know is wrong, and we have admitted this, and I would admit it farther in this court.

THE COURT: Have you talked to a lawyer?

THE WITNESS: No, sir.

THE COURT: I am not going to let you admit it any further in this court. That is all there is about that. The admissions you have already made were very likely [fol. 14] obtained from you without telling you what your Constitutional rights are.

THE WITNESS: No, sir.

THE COURT: What is that?

THE WITNESS: We were advised at the time we were first contacted by the Internal Revenue Service.

THE COURT: If you were, you are the only taxpayer in the United States that has been so advised, because they do not do that when they first contact you. They don't do that. What they do is: They send an agent around to check your books, and he doesn't tell you about those things. They don't start telling you what we are talking about here until they decide there should be a criminal prosecution and they are about to present the matter to that department of the Internal Revenue Service that investigates the possibility of a criminal prosecution.

Now, I have these cases in here all the time, and that is their practice. There is a unit upstairs in the Internal Revenue Service called the Intelligence Unit, and the agents in the Intelligence Unit are the ones to which it is referred to work up the criminal case, if they think there is a criminal case.

You step down.

Are all your witnesses in this shape?

MR. WETZEL: Your Honor, by the time any of [fol. 15] these witnesses were contacted there was a criminal investigation, not of the witnesses, but of the defendant.

It is true that Internal Revenue Service does not require this warning until after the first meeting with the Special Agent. It is the practice in this office they do give them this warning. It is not required, but they do.

THE COURT: Do you know what they say to them? You haven't been in here. We have had cases in here, and it is very rare that the warnings they give meet the decisions of the Supreme Court of the United States that have been recently handed down. The Supreme Court has been spelling this out very recently, and it has been unusual that the agents, not just Revenue agents, but the Treasury agents, FBI agents—it has been very rare in here that they have warned the individual properly.

If we have this kind of a situation, I would want to permit counsel to voir dire the witness—each one of

them—on whether he was warned properly or whether he wasn't warned properly.

I don't think we ought to take sworn testimony from these people who stand in very good shape to get prosecuted here. You prosecute this man, and the first thing you know you will be in here prosecuting all these witnesses.

MR. WETZEL: Your Honor, the testimony will show that they were not aware what was in these—these falsities.

[fol. 16] THE COURT: Now, Mr. Wetzel, you know that is no defense to a criminal charge.

MR. WETZEL: Your Honor, under this section it has to be knowingly and wilfully.

THE COURT: That is right, but when they put their signatures to an income tax return, they can't escape full civil and criminal responsibility, if that is a false return, by saying, "Oh, I didn't know it was illegal." This involves taking deductions.

One case, I have already mentioned, I notice the taxpayer claimed \$90 donation to the Church, and he made only \$75 donation to the Church. I think that is pretty small stuff. But you multiply that by a number of cases, and it amounts to something.

Now, do you mean to tell me that the fellow who prepared the tax return cooked that up out of his own head, and the taxpayer didn't know what he was doing when he put that \$90 down?

MR. WETZEL: Yes, sir, that is precisely it. We have a more flagrant example, like 179—

THE COURT: Well, I will tell you what is going to happen to this case:

Ladies and gentlemen, it won't be necessary for you to attend the court any further on this matter. I am going to excuse you permanently, as I have the rest of [fol. 17] the jury, with the thanks of the court for your coming here and helping us in these matters. I know it is a sacrifice to all of you to lay aside your personal, as well as business, matters to come down here. We summon you, and you do not have any choice about coming. I do try to be lenient about excuses. However, I thank

you very kindly for your coming down. Go to the clerk's office, and they will make arrangements to pay you for this service.

(Jury retires.)

THE COURT: Now, bring those taxpayers in here.

MR. WETZEL: Sir?

THE COURT: I am talking to the marshal.

Now, state the names of the taxpayers to the court reporter.

MR. WETZEL: Michael Linnell, Ramon Wardle, George Wardle, Lana Wardle, Selma Wardle—would be the ones who would testify.

THE COURT: Now, the court wants to say to you taxpayers who have been called— Sit down, Mr. Wetzel, you are in my way—who have been called in here to testify against the man who prepared your income tax return: The charge against that man is that he assisted in preparing—I will read it to you:

That he did wilfully and knowingly aid and assist in, and counsel, procure and advise in the preparation and [fol. 18] presentation to the District Director of Internal Revenue for the Internal Revenue District of Utah, at Salt Lake City, Utah, of income tax returns for various years which were false and fraudulent as to material matters in that they represented various figures that were not true.

Now, the reason I have called you in here to talk to you is that the Constitution of the United States gives you a right to an attorney before you testify in any such way as this.

Do you have an attorney? Have you consulted an attorney, any of you, in this matter?

Well, you have a right to an attorney before you testify and, if you can't afford an attorney yourself, you have the right to an attorney and the court will appoint one at no cost to you to advise with you and let you know what your Constitutional rights are in these matters.

Now, that right to an attorney is a very important thing. You may think you know how to protect your-

selves, protect your Constitutional rights, but until you talk to a lawyer you may not know. As a matter of fact, it is very unusual that you would know. So you are entitled to a lawyer. If you can't afford one, the court will appoint one for you to advise you. And, in the second place, you don't have to say anything to anybody, the Court, the Agency, the District Attorney, or anybody else. You are under no obligation to say a [fol. 19] word if you do not want to, because what you say may be used against you in a criminal proceeding, just like the one that is confronting this man.

Now, all of this the Constitution guarantees you for the purpose of giving you the third Constitutional protection, and that is that you may not be compelled to testify or to give evidence against yourself. Nobody can tell you in this free land of ours to give evidence against yourself; and, in order to protect that Constitutional right against self-incrimination, you are given a right to an attorney, you are given a right to have an attorney appointed for you. You are given the right to have that attorney at no cost to yourself, if you want one. All of this is in protection of the Constitutional right against self-incrimination.

Now, you are entitled to all those rights, and I am not going to let you testify here until you have some time to consult about it, get yourself an attorney and ask his advice about what you are doing.

You see, what it boils down to is that this man helped you—this says that he did wilfully and knowingly aid you and assist you and counsel you and procure and advise in the preparation of income tax returns which were false and fraudulent as to material matters.

Now, if what this information says is true, you are just as guilty as he is; and, before you start swearing [fol. 20] yourselves into a federal penitentiary on this witness stand, I am going to see that you have time and the opportunity to consult with counsel.

Now, this works unfairly, really—these things. Nobody needs to tell an old convict, an old professional criminal, about these things. They know all about it. They know more than the lawyers know about it. Whenever an agent or an FBI man or an Treasury agent

comes around and tries to get them to give them statements, they just laugh at him. But some young person or some person not so young who is illy informed, doesn't know his rights, some person who is of foreign extraction, doesn't understand our language, doesn't understand our Constitution and practices, some person of that kind, disadvantaged person of one kind and another—those people are the ones that get trapped by this sort of business.

I am not suggesting that the Internal Revenue Service was trying to trap anybody, but I am suggesting to you that it is the duty of this court to advise you about these things, and that I am doing. I am not going to take any testimony from you until you have an opportunity to consult with counsel. This first witness who was on the stand said he had already admitted it, he had already made his admissions, and he said they had already been advised. By this man sitting at the desk, I suppose. He [fol. 21] is the one who wrote a note to the attorney telling him they had been advised, already been advised, I suppose.

Well, whether that advice to you was adequate to meet the standards of the Miranda case and the Escobedo case in the Supreme Court of the United States and the still more recent case is something only a lawyer can tell you.

So this case is vacated, setting is vacated this afternoon, and it will be calendared again; and, before it is calendared again, I am going to have these witnesses in and talk to them again before I will permit them to testify.

\* \* \* \*

### CERTIFICATE

I, Lucille Hallam, Official Reporter, United States District Court, District of Utah, do hereby certify that the foregoing is a true and correct transcript of proceedings in the above-entitled matter.

DATED at Salt Lake City, Utah this twenty-seventh day of February, 1969.

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Official Reporter

IN THE UNITED STATES DISTRICT COURT FOR  
THE DISTRICT OF UTAH  
CENTRAL DIVISION

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No. CR-9-68

Filed Nov. 12, 1968

UNITED STATES OF AMERICA, PLAINTIFF

VS.

MILTON C. JORN, DEFENDANT

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MEMORANDUM IN SUPPORT OF DEFENDANT'S  
MOTION TO DISMISS THE INFORMATION ON THE  
GROUND OF ONCE IN JEOPARDY

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FACTS

The present action against defendant was filed on November 15, 1967, charging defendant with twenty-five counts of aiding and abetting in the preparation of false and fraudulent income tax returns. The matter reached this court for trial on August 27, 1968 at which time a jury was impanelled. After the jury was impanelled the government moved to dismiss fourteen counts of the original information. The motion was granted and plaintiff pleaded not guilty to the eleven remaining counts of the amended information. Thereafter the jury was returned to the jury box and the government commenced to put on its case.

The government's first witness, Joel A. Jensen, was sworn and testified and plaintiff's Exhibits 1 through 11 were marked and received. Thereafter the government called Mr. Michael R. Linnell as its second witness. Mr. Linnell was sworn. At this point counsel for defendant pointed out to the court that it was his feeling that each of these taxpayer-witnesses should be warned as to his constitutional rights before testifying because it was felt

there was a possibility they could be incriminating themselves. (See Excerpt from Proceedings, page 2).

Thereupon the court proceeded, in the presence of the jury, to point out to the witness his constitutional rights with regard to self-incrimination. The court pointed out that the witness had a right to remain silent, and he had a right to consult with an attorney, and that if he could not afford an attorney one would be furnished to him by the court. After this warning the following dialogue between the court and the witness occurred:

THE COURT: Well, what do you want to do?

THE WITNESS: Your Honor, my wife and I have had it pointed out that our returns have information in them that we know is wrong, and we have admitted this, and I would admit it farther in this court.

THE COURT: Have you talked to a lawyer?

THE WITNESS: No, sir.

THE COURT: I am not going to let you admit it any further in this court. That is all there is about that. The admissions you have already made were very likely obtained from you without telling you want your constitutional rights are.

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THE COURT: Now, Mr. Wetzel, you know that is no defense to a criminal charge.

MR. WETZEL: Your Honor, under this section it has to be knowingly and wilfully.

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MR. WETZEL: Yes, sir, that is precisely it. We have a more flagrant example, like 179—

THE COURT: Well, I will tell you what is going to happen in this case:

Ladies and gentlemen, it won't be necessary for you to attend the court any further on this matter. I am going to excuse you permanently, as I have the rest of the jury, with the thanks of the court for your coming here and helping us in these matters.

(Excerpt From Proceedings pages 2 through 8)

THE UNDISPUTED FACTS SHOW THAT DEFENDANT WAS ONCE IN JEOPARDY ON THE AMENDED INFORMATION AND THE LAW IS CLEAR THAT HE CANNOT NOW BE TRIED AGAIN ON THE SAME CHARGES.

The above quote from the record of the proceedings amply illustrates defendant's position. The prosecutor in the case was not prepared to go on with the trial. His witnesses had not been properly prepared and properly warned so that they could testify in the matter. Therefore the court vacated the trial setting. It is obvious from the record in the case that the vacated trial setting *was to the express benefit of the prosecution* and to the prejudice of defendant.

The *Miranda* [*Miranda v. Arizona* 384 U.S. 436 (1966)] and *Escobedo* [*Escobedo v. Illinois* 378 U.S. 478 (1964)] decisions have been the law in this country since 1966 and 1964 respectively. The prosecution was well aware of these cases and should have adequately prepared its witnesses so that they could testify. Having failed to do so, the prosecution cannot now take advantage of the vacated trial setting to make such preparation and hence once more impanel a jury and place defendant once more in jeopardy.

(a) *Jeopardy attaches when the jury is sworn and evidence is taken by a court of competent jurisdiction.* The cases are clear as to when jeopardy attaches. The United States Supreme Court in the case of *Green v. United States*, 355 U.S. 184, 188 (1957) stated:

Moreover it is not even essential that a verdict of guilt or innocence be returned for a defendant to have once been placed in jeopardy so as to bar second trial on the same charge. *This court, as well as most others, has taken the position that a defendant is placed in jeopardy once he is put on trial before a jury so that if the jury is discharged without his consent he cannot be tried again.* (Emphasis added).

(b) *The effect of the attachment of jeopardy and the discharge of the jury is to prevent retrial.* In the majority of cases once jeopardy attaches and the jury is dismissed, the defendant may not be retried for the same crime. *E.g. Downum v. United States*, 372 U.S. 735 (1963); *Cornero v. United States*, 48 Fed. 2d 69 (9th Cir. 1931). Such a result has been especially true when the cause for the dismissal of the jury has been traced to the prosecution, since one of the purposes of the Fifth Amendment prohibition against double jeopardy has been to prevent "harrassment of an accused by successive prosecution . . . so as to afford the prosecution a more favorable opportunity to convict . . ." *Downum v. United States*, 372 U.S. 734, 736 (1963); *Waters v. United States*, 328 F 2d 739 (10th Cir. 1964).

Thus in the *Downum* case where the prosecutor did not have his witnesses present in court and ready to testify at the conclusion of the impanelling of the jury,

the court held that jeopardy had attached and that there was no reason for allowing a retrial of the defendant. In the *Cornero v. United States, supra*, the district attorney was not prepared to go forward with his witnesses after the jury was impanelled. This was due to the fact that some of his witnesses had not appeared in court. However, the district attorney had not subpoenaed these witnesses and the court made the following statement:

There is no difference in principle between a discovery by the district attorney immediately after the jury was impanelled that his evidence was insufficient and a discovery after he had called some or all of his witnesses. *It is uniformly held that, in the absence of sufficient evidence to convict, the district attorney cannot by any act of his deprive the defendant of the benefit of the constitutional provision prohibiting a person from being twice put in jeopardy for the same offense. Cornero v. United States, supra at 71. (Emphasis added).*

Thus the court refused to allow a retrial.

There are some cases in which the jury has been discharged and a retrial has been allowed. This is in the sound discretion of the court. However, the Supreme Court in the *Downum* case stated:

The discretion to discharge the jury before it has reached a verdict is to be exercised "only in very extraordinary and striking circumstances,". *Downum v. United States, supra at 736.*

These striking circumstances referred to by the court in the *Downum* case are set forth in several other cases decided by the United States Supreme Court. In the case of *Wade v. Hunter*, 336 U.S. 684, 688 (1949) the Supreme Court stated:

The double jeopardy provision of the Fifth Amendment, however, does not mean that every time a defendant is put to trial before a competent tribunal he is entitled to go free if the trial fails to end in a final judgment. Such a rule would create an in-

superable obstacle to the administration of justice in many cases in which there is no semblance of the type of *oppressive practices* at which the double jeopardy prohibition is aimed. *There may be unforeseeable circumstances that arise during a trial making its completion impossible, such as the failure of a jury to agree on a verdict.* In such event the purpose of law to protect society from those guilty of crimes frequently would be frustrated by denying courts power to put the defendant to trial again and *there have been instances where a trial judge has discovered facts during a trial which indicated that one or more members of the jury might be biased against the Government or the defendant.* It is settled that the duty of the judge in this event is to discharge the jury and direct a retrial. (Emphasis added).

The court in the *Wade* case went on to deny the plea of double jeopardy based upon facts which showed that completion of the first trial was made impossible by the exigencies of war. (the case was a military court martial case). All of the jury cases which have allowed retrial have been cases in which, either a juror was shown to be prejudiced, or in which the defendant had asked for the continuance, or in which the continuance was made by the court in order to protect rights of a defendant, or in which the continuance or discharge of the jury was made necessary by unforeseeable circumstances. See *E.g. Wade v. Hunter, supra*; *Gori v. United States*, 367 U.S. 364 (1961); *Brock v. North Carolina*, 344 U.S. 424 (1953).

The facts in the instant case as set forth above, place it squarely within the *Cornero* and *Downum* rules. Both of those cases were cases in which the prosecution was not prepared to go forward with evidence sufficient to convict, and therefore the court discharged the jury. In both cases the courts held that no retrial could be had since the defendant had been once placed in jeopardy. *In both of these cases the court held that the lack of proper preparation by the prosecution does not justify a retrial.*

In the instant case the prosecution was well aware of the *Miranda* and *Escobedo* decisions requiring constitutional warnings to be given prior to the taking of incriminating statements. The transcript of the preliminary hearing in this matter clearly points out the possibility of incrimination on the part of these witnesses. (See for instance Tr. 135, 147, 214). Therefore, the prosecution should have given these witnesses proper *Miranda-Escobedo* warnings and should have allowed them to consult counsel prior to the trial of this matter.

### CONCLUSION

In the instant case, the jury was impanelled and evidence was taken. Jeopardy attached. The fact that these witnesses were not allowed to testify simply indicates that the prosecution was not prepared to go forward with its case. When the jury was discharged by the court, it was no less than an acquittal of the defendant on those charges and he cannot now be retried.

Dated this 11th day of November, 1968.

Respectfully submitted,

/s/ Denis R. Morrill  
DENIS R. MORRILL  
Attorney for Defendant

### MAILING CERTIFICATE

I hereby certify that a copy of the foregoing was mailed to Frank T. Wetzel, U. S. Attorney, Post Office Building, Salt Lake City, Utah, 84110, this 11th day of November, 1968.

/s/ Denis R. Morrill  
DENIS R. MORRILL

IN THE UNITED STATES DISTRICT COURT FOR  
THE DISTRICT OF UTAH, CENTRAL DIVISION

CR-9-68

Filed In United States District Court, District of Utah,  
Time: Nov. 12, 1968, Andrew John Brennan, Clerk

UNITED STATES OF AMERICA, PLAINTIFF

*vs.*

MILTON C. JORN, DEFENDANT

PLAINTIFF'S MEMORANDUM ON  
FORMER JEOPARDY

**BACKGROUND:**

Upon commencement of trial after the jury had been impaneled and sworn, the government produced a witness for the purpose of laying a foundation for admission of income tax returns. The Court suggested, and defense counsel agreed, that a stipulation would facilitate this matter, and that matter was so stipulated.

The next government witness was then called to the stand. Before he testified, however, defense counsel inquired of the Court if this witness was aware of the danger of self-incrimination and his constitutional rights incident thereto. The witness replied that he had been informed of his rights but had not consulted an attorney. At this juncture the Court ordered a continuance, dismissed the jury and indicated the trial should not proceed until said witness, and the rest of the prosecution's witnesses, had consulted counsel.

**ISSUE:**

Under the circumstances present in this case, will a plea by defendant of former jeopardy be sustained as a bar to further prosecution?

**DISCUSSION:**

The proper form of the defense plea is former or double jeopardy. This is so because double jeopardy re-

fers not to being punished twice, but against being twice put in jeopardy of conviction for the same offense. See *Waters v. United States*, 328 F.2d 739 (CA 10, 1964).

The basis of protection from double jeopardy may emanate from either of two constitutional sources: (1) the due process clause of the 14th Amendment; (2) The Fifth Amendment. The 14th Amendment due process clause has been construed to apply double jeopardy prohibitions toward state prosecutions. This constitutional limitation has not come from the 5th Amendment, however, but from a "concept of ordered liberty," as the due process clause does not specifically apply to the states any of the provisions of the first eight amendments as such. See *Barkus v. Illinois*, 359 U.S. 121, 79 S.Ct. 676, 3 L.Ed.2d 684, rehearing denied 360 U.S. 907, 79 S.Ct. 1283, 3 L.Ed.2d 1258 (1959). The Supreme Court in *Cichos v. Indiana*, 385 United States 76, 17 L.Ed.2d 175, 87 S.Ct. 271 (1966), recently granted certiorari on the single question of whether the 5th Amendment double jeopardy prohibition is applicable to the states through the due process clause, but that Court later dismissed the writ on that question alone as improvidently granted, and otherwise disposed of the case. As it now stands, double jeopardy is applied to the states not as part of the 5th Amendment, but as a concept "implicit in ordered liberty" through the 14th Amendment. This distinction may be important for two reasons. (1) The Supreme Court has hesitated to apply the 5th Amendment double jeopardy concept to the states. It evidently has not wanted to be bound by 5th Amendment decisions concerning double jeopardy. (2) The one case closely in point is a state case applying the "ordered liberty" concept rather than a federal case dealing with the 5th Amendment.

The traditional view is that once a jury has been sworn and impaneled defendant has been put in jeopardy and so the state must continue its case to a conclusion or hold him harmless for that offense. This general principle, however, is subject to the rule of reason; if cogent reasons exist justifying a continuance or later trial and the defendant has not been materially prejudiced, the 5th Amendment double jeopardy clause has been held not to have been then violated.

The Fifth Circuit case of *Downum v. United States*, 300 F.2d 137 (1962) held that double jeopardy did not attach when a government witness failed to appear at trial. The Supreme Court in a five to four decision reversed, 372 United States 734, 83 S.Ct. 1033, 10 L.Ed.2d 100 (1962), because no "extra-ordinary and striking circumstances" existed. The Court held that since the prosecution witness had not been served with summons and no other arrangements had been made to insure his presence, no compelling circumstances existed to warrant a continuance; therefore, double jeopardy applied. The Supreme Court in *Downum* cited *Cornero v. United States*, 48 F.2d 69 (CA 9, 1931) with approval; the four dissenters argued that the *Cornero* standard was too harsh and that in *Wade v. Hunter*, 336 United States 684 (1949), the Court had previously rejected it.

The *Downum* Supreme Court majority, however, did purport to follow its just-prior decision in *Gori v. United States*, 367 United States 364, 81 S.Ct. 1523, 6 L.Ed.2d 901, rehearing denied 368 United States 870, 82 S.Ct. 25, 7 L.Ed. 70 (1961). The facts of this case (also a five-four decision) concerned a mistrial prematurely declared by an over-zealous judge when he felt the prosecution was attempting to inform the jury of other crimes of the accused. The Court stated:

"Where, for reasons deemed compelling by the trial judge, who is best suited intelligently to make such a decision, the ends of substantial justice cannot be attained without discontinuing the trial, a mistrial may be declared without defendant's consent and even over his objection, and he may be retried consistently with the Fifth Amendment. *Simmons v. United States*, 142 United States, 148; *Logan v. United States*, 144 U.S. 263; *Dreyer v. Illinois*, 187 United States 71, 85-86. It is also clear that 'This Court has long favored the rule of discretion in the trial judge to declare a mistrial and to require another panel to try the defendant if the ends of justice will be best served. . . ' *Brock v. North Carolina*," 344 United

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<sup>40</sup> *Brock v. North Carolina* was a state prosecution and therefore arose, of course, under the Due Process Clause of the Fourteenth

States, 424, 427, and that we have consistently declined to scrutinize with sharp surveillance the exercise of that discretion." 367 United States 364 at 368.

The Gori case is significant because it shows a disposition by the Supreme Court to not invoke double jeopardy if the reason for mistrial or continuance is not to cover the prosecution's mistakes or facilitate defendant's conviction. It is also significant that *Brock v. North Carolina*, *supra*, was there cited even though a state prosecution, because the refusal in *Brock* of prosecution witnesses to testify was not really a matter of fault; a mistrial in that case was, therefore, upheld as not double jeopardy.

The *Brock* case, *supra*, although not controlling, is closely analogous to the facts of the instant problem. In that case two of the state's witnesses refused to testify because their answers might tend to incriminate them. The defendant was later tried before a second jury and convicted. The *Brock* court stated:

"Justice to either or both parties may indicate to the wise discretion of the trial judge that he declare a mistrial and require the defendant to stand trial before another jury. As in all cases involving what is or is not due process, so in this case, no hard and fast rule can be laid down." 344 United States 424, 427.

In the instant case, no fault could be attributed to the prosecution. The prosecution's witnesses had been served by subpoena, were present and prepared to testify. The prosecution did not request a continuance and the defense expressed no objection to the Court's dismissing the jury. In response to the defense's request that the witnesses be adequately warned of their constitutional rights, the initiative was taken entirely by the Court in its discretion to do substantial justice to not only the parties, but also other persons involved in the action whose interests might be harmed. Even the *Downum* case, *supra*, recognized

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Amendment. The passage quoted from *Brock*, however, related to the application in federal prosecutions of the double jeopardy provision of the Fifth."

that compelling circumstances would warrant a continuance or new trial.

**CONCLUSION:**

Under these circumstances, plaintiff asserts that the Court's action in dismissing the jury is within the sound judicial discretion of the Court, the defendant has not been prejudiced by such action and defendant's plea of former jeopardy cannot be sustained.

Respectfully submitted.

WILLIAM T. THURMAN  
United States Attorney

By F. T. WETZEL  
F. T. WETZEL  
Assistant United States Attorney  
Attorneys for Plaintiff  
United States of America

**Address:**

200 U. S. Post Office and Court  
House Building, 350 So. Main  
Salt Lake City, Utah 84101

On this 12th day of November, 1968, I mailed a copy of the above and foregoing Plaintiff's Memorandum on Former Jeopardy to Dennis R. Morrill, Esquire, Attorney at Law, 206 El Paso Natural Gas Building, Salt Lake City, Utah, Attorney for Defendant.

/s/ Lucy S. Taylor  
Secretary

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

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No. CR-9-68

UNITED STATES OF AMERICA, PLAINTIFF

vs.

MILTON C. JORN, DEFENDANT

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ORDER DISMISSING INFORMATION

This matter having come on for hearing before the Honorable Willis W. Ritter, Chief Judge, United States District Court, for the District of Utah, Central Division, pursuant to defendant's Motion to Dismiss on the Grounds of Once in Jeopardy, Frank T. Wetzel appearing for the United States Attorney and Denis R. Morrill appearing for the defendant, Milton C. Jorn, and the court being fully apprised in the matter, makes the following order:

IT IS HEREBY ORDERED that the amended information in the case CR-9-68 filed by the United States of America on the 19th day of August, 1968, and amended on the 27th day of August, 1968, is hereby dismissed, pursuant to defendant's motion, on the ground of former jeopardy.

Dated this 9th day of January, 1969.

/s/ Willis W. Ritter  
WILLIS W. RITTER,  
Chief Judge  
United States District Court

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

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Criminal No. CR-9-68

Filed In United States District Court, District of Utah,  
Time: Feb. 7, 1969, Andrew John Brennan, Clerk

UNITED STATES OF AMERICA, PLAINTIFF

VS.

MILTON C. JORN, DEFENDANT

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NOTICE OF APPEAL TO THE SUPREME COURT  
OF THE UNITED STATES

I. Notice is hereby given that the United States appeals to the Supreme Court of the United States from the order of January 9, 1969, dismissing the information which charged the defendant with violating 28 U.S.C. 7206(2).

This appeal is taken pursuant to 18 U.S.C. 3731.

II. The Clerk will please prepare a transcript of the record in this cause for transmission to the Clerk of the Supreme Court of the United States, and include therein the following:

- (1) Transcript of docket entries;
- (2) Information filed February 23, 1968;
- (3) Order dated August 27, 1968 dismissing certain counts of the information;
- (4) Amended information filed August 27, 1968;
- (5) Transcript of trial proceedings of August 27, 1968;
- (6) Defendant's motion to dismiss information on the ground of double jeopardy and memorandum in support thereof;
- (7) Plaintiff's memorandum on former jeopardy;

(8) Order dated January 9, 1969, dismissing the information;

(9) This notice of appeal.

III. The following question is presented by this appeal:

The first trial resulted in a discharge of the jury after the defense had raised the question of whether the Government had advised its witnesses of their privilege against self-incrimination and—in the judge's opinion—they had not been fully so advised. The question presented is whether in these circumstances the later order dismissing the information on the ground of double jeopardy was proper.

Dated at Salt Lake City, Utah, this 7th day of February, 1969.

WILLIAM T. THURMAN  
United States Attorney

By F. T. WETZEL  
F. T. WETZEL  
Assistant United States Attorney  
Attorneys for United States of  
America, Plaintiff

This is to certify that a copy of the foregoing Notice of Appeal has been mailed to Denis R. Morrill, Esq., Attorney at Law, 206 El Paso National Gas Building, Salt Lake City, Utah, 84111, attorney for defendant, this 7th day of February, 1969.

LUCY S. TAYLOR  
Secretary

## SUPREME COURT OF THE UNITED STATES

No. 84, October Term, 1969

UNITED STATES, APPELLANT

v.

MILTON C. JORN

APPEAL from the United States District Court for the District of Utah.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is placed on the summary calendar.

October 13, 1969